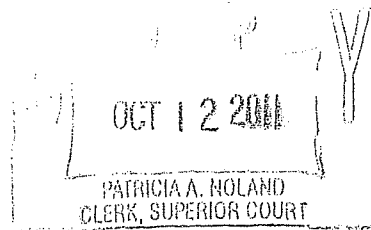


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14 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
15 IN AND FOR THE COUNTY OF PIMA

16 THE STATE OF ARIZONA *ex rel.* THOMAS C.
17 HORNE, the Attorney General, and THE CIVIL
18 RIGHTS DIVISION OF THE ARIZONA
19 DEPARTMENT OF LAW,

20 Plaintiff,

21 vs.

22 CINEMARK HOLDINGS, INC., CINEMARK
23 USA, INC., dba CINEMARK 10 and
24 CINEMARK MESA 16 and CENTURY
25 THEATRES, INC. dba CENTURY 20
26 EL CON, CENTURY 16, CENTURY
GATEWAY 12, CENTURY PARK PLACE 20,
and CENTURY THEATERS AT THE ORO
VALLEY MARKETPLACE,

Defendants.

No.

020117277

COMPLAINT

TED B. BOREK

1 Plaintiff, the State of Arizona *ex rel.* Thomas C. Horne, the Attorney General, and the
2 Civil Rights Division of the Arizona Department of Law (collectively the "State"), allege as
3 follows:

4 INTRODUCTION

5 This is an action brought under the Arizonans with Disabilities Act, A.R.S. § 41-1492,
6 *et seq.*, ("AzDA"), to correct a discriminatory public accommodation practice, to provide
7 appropriate relief to aggrieved persons, and to vindicate the public interest. Movies are a vital
8 part of the social, cultural and political life of Arizonans. Movies and their stars, music,
9 themes, messages and characters infuse our social activities, entertainment, discussions and
10 shared experiences. The State brings this matter to redress Defendants' failure to provide
11 effective auxiliary aid and services equipment to transmit video descriptions, which are
12 available on a dedicated track on many of the digital cinema packages sent to Cinemark by the
13 film industry, to Janna Peyton and the class of similarly aggrieved persons who are blind or
14 visually impaired, thus precluding their full and equal enjoyment of movies shown at
15 Defendants' Arizona theaters in violation of the AzDA, A.R.S. § 41-1492.02(A), (B) and
16 (G)(3).

17 JURISDICTION AND VENUE

18 1. This Court has jurisdiction of this matter pursuant to A.R.S. § 41-1492.09.

19 2. Venue is proper in Pima County pursuant to A.R.S. § 12-401(17). Janna Peyton
20 lives in Pima County and the alleged discrimination against Peyton took place in Pima County,
21 Arizona.

22 PARTIES

23 3. The Civil Rights Division of the Arizona Department of Law is an administrative
24 agency established by A.R.S. § 41-1401 to enforce the provisions of the Arizona Civil Rights
25 Act, A.R.S. § 41-1401, *et seq.*, including the AzDA.
26

1 4. The State brings this action on its own behalf and on behalf of the Tucson Society
2 of the Blind, Janna Peyton ("Peyton"), Josephine Arnoux ("Arnoux"), Cyndi Brooks
3 ("Brooks"), Maryse Figueurora ("Figueurora"), Lillian Jones ("Jones"), Dave Matteson
4 ("Matteson"), Erma Seal ("Seal"), Sylvia Sterling ("Sterling"), Charles Barnhart ("Barnhart"),
5 Ruth Burnell ("Burnell"), Patty Greene ("Greene"), Barbara MacPherson ("MacPherson"), Tina
6 Marezak ("Marezak"), Felicia Whitman ("Whitman"), aggrieved persons, and the class of
7 similarly situated aggrieved persons who are blind or visually impaired. Peyton and the class of
8 similarly aggrieved persons do not experience full and equal enjoyment of movies and their
9 soundtracks without an auditory representation of the visual aspects of a film because of their
10 disabilities. A.R.S. § 41-1492.09(A), (B) and (C).

11 5. Cinemark Holdings, Inc. is one of the largest motion picture theater companies in
12 the United States and wholly owns Defendant Cinemark, USA.

13 6. Cinemark USA, Inc. is a Texas corporation that constructs, owns, and operates
14 436 movie theater multiplexes with a total of 4,983 screens in 39 states as of August 05, 2011,
15 including six theater multiplexes in the State of Arizona.

16 7. Cinemark USA, Inc. owns and operates Cinemark Mesa 16 in Mesa, Arizona and
17 Cinemark 10 in Sierra Vista, Arizona.

18 8. Century Theatres, Inc. is a wholly-owned subsidiary of Cinemark USA, Inc.

19 9. Century Theatres, Inc. and Cinemark USA, Inc. own and operate Century
20 Theatres at the Oro Valley Marketplace in Oro Valley, Arizona and Century 20 El Con,
21 Century Park Place 20 and XD, and Century Gateway 12 in Tucson. During the relevant
22 period, Century Theatres, Inc. and Cinemark owned and operated Century Park 16, which it
23 presently does not operate.

24 10. There may be unknown defendants that are corporations, subsidiary corporations,
25 and/or business formations that wholly and/or partially own, lease, lease to, or operate
26 Cinemark theaters in Arizona. Pursuant to Ariz. R. Civ. P., Rule 10(f), these unknown

1 defendants are identified as Corporations A-Z and their true names will be identified through
2 discovery. Once the true names are discovered, the Complaint will be amended accordingly.
3 Cinemark Holdings, Inc., Cinemark USA, Inc., and Century Theatres, Inc., as well as the
4 named affiliates and any unknown entities, are referred to collectively as "Cinemark" or
5 "Defendants."

6 11. Cinemark and its affiliates currently own and operate six movie theater
7 multiplexes in Arizona with 90 screens, including Century 20 El Con, Century Gateway 12,
8 Century Park Place 20 and XD, Century Theatres at the Oro Valley Marketplace, Cinemark 10
9 (Sierra Vista), and Cinemark Mesa 16. These theaters are places of "public accommodation" as
10 that term is defined in A.R.S. § 41-1492(11)(c).

11 **BACKGROUND**

12 12. The Tucson Society of the Blind is a non-profit corporation and its mission is to
13 provide recreation, social and education programs to people living with blindness and visual
14 impairments.

15 13. Janna L. Peyton is, and at all relevant times has been, an individual with a
16 disability within the meaning of A.R.S. § 41-1492(6). Specifically, Peyton has been completely
17 blind since 1999. As a result of the severity of her visual impairment, she cannot see visual
18 aspects of a movie.

19 14. Josephine Arnoux, Cyndi Brooks, Maryse Figueurora, Lillian Jones, Dave
20 Matteson, Erma Seal, Sylvia Sterling, Charles Barnhart, Ruth Burnell, Patty Greene, Barbara
21 MacPherson, Tina Marezak, and Felicia Whitman have been members of the Tucson Society of
22 the Blind and have visual impairments that are sufficiently severe that they cannot see visual
23 aspects of a movie.

24 15. According to the Arizona Department of Economic Security, it is estimated that
25 in 2004 there were 29,602 people who are legally blind and 137,131 people with low vision
26 residing in Arizona. According to the Department, 2011 estimates provide that 30,652

1 Arizonans are legally blind.¹ The American Foundation for the Blind estimates, based on the
2 U.S. Census's 2008 American Community Survey, 91,455 Arizonans had vision loss that could
3 not be adequately corrected with corrective lenses.²

4 16. Due to their disabilities, Peyton, Arnoux, Brooks, Figueurora, Jones, Matteson,
5 Seal, Sterling, Barnhart, Burnell, Greene, MacPherson, Marezak, Whitman, and the class of
6 similarly-situated individuals require an audio representation of the visual aspects of a film.

7 17. Video description provides information about key visual aspects of a movie by
8 describing scenery, facial expressions and costumes, action settings and scene changes during
9 natural pauses in dialogue. The video description enables people who are blind or visually
10 impaired attending movies to hear the description to get visually-delivered information about
11 the film in an audio format through descriptions.³

12 18. Major movie studios distribute wide-release movies with video descriptions.
13 When a film studio creates video descriptions for a movie, it distributes the video descriptions
14 on a CD-rom to theaters using 35 mm films and as part of a digital cinema package to theaters
15 who have installed digital servers. Recent wide-release movies that come to movie theaters
16 with video descriptions include but are not limited to: Contagion, Courageous, Dolphin Tale,
17 Moneyball, and What's Your Number.

21 ¹ See <https://www.azdes.gov/main.aspx?menu=32&id=1684> (last visited October 11,
22 2011).

23 ² See
24 <http://www.afb.org/Section.asp?SectionID=15&TopicID=384&DocumentID=5139> (last visited
25 October 11, 2011).

26 ³ For more information about video or audio description, see <
<http://www.acb.org/adp/ad.html>> (last visited August 5, 2010.)

1 19. There is available technology, such as DVS Theatrical® (“DVS”), which delivers
2 video description of 35 mm films via listening systems to movie patrons using headsets or other
3 receivers.

4 20. A movie theater can acquire the equipment for video descriptions to be played
5 while a 35 mm film is being shown. The cost to purchase the required digital server for a 35
6 mm screen is approximately \$5,500; the theater also would need to acquire headsets for the
7 movie patron to hear the descriptions and an RF (radio frequency) or IR (infrared) sound
8 transmitter.

9 21. Since 2010, Cinemark has installed digital cinema servers made by Doremi on all
10 screens at its Cinemark Mesa 16, Century Theaters at Oro Valley Marketplace, Century 20 El
11 Con, and Century Park Place 20 theaters.

12 22. Doremi produces a wireless audio delivery system, called Fidelio, for the
13 transmission of video descriptions in theaters that is compatible with all types of headsets. The
14 system can be added on to the Doremi servers purchased by Cinemark at a cost of
15 approximately \$1,100 per screen.

16 23. Cinemark is not limited to the Fidelio system. There are other commercially
17 available systems for the transmission of video descriptions to blind or visually impaired
18 patrons of Cinemark’s digital theaters.

19 24. On February 13, 2007, Peyton, as President of the Tucson Society of the Blind
20 (“TSB”), on behalf of herself and the other named aggrieved persons, filed a complaint of
21 discrimination with the State’s Civil Rights Division pursuant to A.R.S. § 41-1492.09(A), in
22 which she alleged that she was denied the necessary auxiliary aids and services to be able to
23 view a movie. Specifically, Peyton alleged that on January 27, 2007, she and her husband went
24 to Cinemark’s Park Place 20 theater to view “Night at the Museum,” but Cinemark did not have
25 the equipment to transmit video descriptions for the movie.
26

1 25. The State's Civil Right Division investigated Peyton's administrative complaint
2 and investigated Cinemark and affiliates' general compliance with the provision of auxiliary
3 aids and services pursuant to its authority under A.R.S. § 41-1492.09.

4 26. The Division found that reasonable cause exists to believe that Defendants
5 discriminated against Peyton, Arnoux, Brooks, Figueurora, Jones, Matteson, Seal, Sterling,
6 Barnhart, Burnell, Greene, MacPherson, Marezak, and Whitman, persons with disabilities, and
7 the class of similarly-situated persons who are blind or visually impaired and require an
8 auditory representation of the visual elements of movies, in violation of the AzDA.
9 Specifically, Cinemark and affiliates failed to offer any video description services to their
10 visually impaired customers.

11 27. The Division found that, at all times relevant to these administrative complaints,
12 none of Defendants' 90 auditoriums in their 6 theaters in Arizona were equipped with auxiliary
13 aids to provide video description.

14 28. On September 13, 2011, the State issued a finding ("the Cause Finding") that
15 reasonable cause exists to believe Defendants discriminated against Peyton, Arnoux, Brooks,
16 Figueurora, Jones, Matteson, Seal, Sterling, Barnhart, Burnell, Greene, MacPherson, Marezak,
17 and Whitman, persons with disabilities, and the class of similarly-situated persons who are
18 blind or visually impaired and require an auditory representation of the visual features of the
19 film, by denying full and equal enjoyment of Defendants' services in violation of the AzDA.

20 29. The Parties have not entered into a conciliation agreement.

21 **STATEMENT OF CLAIM**

22 **(Disability Discrimination in Violation of AzDA)**

23 30. The State realleges and incorporates by reference the allegations contained in
24 Paragraphs 1 through 29 of this Complaint.

1 31. Defendants now own and/or operate, and at all relevant times have owned and/or
2 operated, places of public accommodation in Arizona within the meaning of A.R.S. § 41-
3 1492(11)(c).

4 32. AzDA prohibits discrimination against an individual on the basis of disability in
5 the full and equal enjoyment of the goods, services, facilities, privileges, advantages or
6 accommodations of any place of public accommodation by any person who owns or operates a
7 place of public accommodation. A.R.S. § 41-1492.02(A).

8 33. Discrimination includes subjecting an individual, based on disability, to a denial
9 of the opportunity to participate in or benefit from the goods, services, facilities, advantages,
10 privileges or accommodations of an entity; or the loss of the opportunity to participate in or
11 benefit from goods, services, facilities, privileges, advantages or accommodations that are not
12 equal to those afforded other individuals. A.R.S. § 41-1492.02(B)(2).

13 34. Discrimination also includes the failure of a covered place of public
14 accommodation to take necessary steps to ensure that no individual with a disability is
15 excluded, denied goods, segregated or otherwise treated differently than other individuals
16 because of the absence of auxiliary aids and services, unless the entity can demonstrate that
17 taking these steps would fundamentally alter the nature of the goods, services, facilities,
18 privileges, advantages or accommodations being offered or would result in an undue burden,
19 in violation of A.R.S. § 41-1492.02(G)(3).

20 35. Auxiliary aids and services includes video description because this technology is
21 an “. . . effective method[] of making visually delivered materials available to individuals with
22 visual impairments” as defined by A.R.S. § 41-1492(2)(b).

23 36. Auxiliary aids and services includes acquiring equipment or devices to provide an
24 effective alternative method of making visually delivered materials available to people with
25 disabilities under A.R.S. § 41-1492(2)(c).

37. Defendants discriminated against Peyton, Arnoux, Brooks, Figueurora, Jones, Matteson, Seal, Sterling, Barnhart, Burnell, Greene, MacPherson, Marezak, and Whitman, and the class of persons who are blind or visually impaired by not providing access to descriptions of visual aspects of films through video description and, therefore, denying them full and equal enjoyment of its services, in violation of A.R.S. § 41-1492.02(A).

38. Auxiliary aids and services are available for Cinemark and its affiliates to purchase and install that would allow for full and equal enjoyment of its services through video description by Peyton, Arnoux, Brooks, Figueurora, Jones, Matteson, Seal, Sterling, Barnhart, Burnell, Greene, MacPherson, Marezak, and Whitman, and the class of persons who are blind or visually impaired.

39. By failing to take steps to provide auxiliary aids and services, Defendants discriminated against Peyton, Arnoux, Brooks, Figeurora, Jones, Matteson, Seal, Sterling, Barnhart, Burnell, Greene, MacPherson, Marezak, and Whitman, and the class of blind or visually-impaired persons who do not have access to the visual aspects of a film without video description because of their disabilities, in violation of A.R.S. § 41-1492.02(A) and (G)(3).

40. As a result of Defendants' discrimination, Peyton, Arnoux, Brooks, Figeurora, Jones, Matteson, Seal, Sterling, Barnhart, Burnell, Greene, MacPherson, Marezak, and Whitman, and the class of blind and visually impaired have suffered denial of civil rights, inconvenience, loss of enjoyment and other non-pecuniary monetary damages.

41. Compliance with the terms of the requested relief for the class of aggrieved persons in the Prayer for Relief would not in any event exceed \$5,000,000.

PRAYER FOR RELIEF

WHEREFORE, the State requests that this Court:

A. Enter judgment on behalf of the State, finding that Defendants unlawfully discriminated against Peyton, Arnoux, Brooks, Figeurora, Jones, Matteson, Seal, Sterling, Barnhart, Burnell, Greene, MacPherson, Marezak, and Whitman, and the class of similarly-

1 situated persons who are blind or visually impaired, in violation of AzDA because of their
2 failure to install a sufficient number of system(s) for providing video descriptions for movies
3 that the film studios had described and which are selected for showing(s) at any of Defendants'
4 theater(s).

5 B. Enjoin Defendants, their successors, assigns and all persons in active concert or
6 participation with Defendants, from engaging in any public accommodation practice that
7 discriminates on the basis of disability in violation of AzDA, as allowed by A.R.S. § 41-
8 1492.09(B).

9 C. Enter injunctive relief against Defendants, including but not limited to, requiring
10 Defendants to install necessary auxiliary aids and services in additional auditoriums in their
11 existing theaters and any acquired or newly-built theaters; implement an appropriate training
12 program and evaluation of employees regarding operation of the captioning and video
13 description equipment and assistance of movie patrons with sensory disabilities; develop a
14 method of soliciting information from movie customers with sensory disabilities about
15 preferences in auxiliary aids and services as newer auxiliary aids and services become
16 available; and improve access to information about movies, show times and other services and
17 accommodations at Harkins theaters to people with sensory disabilities.

18 D. Assess a statutory civil penalty against Defendants to vindicate the public
19 interest in an amount that does not exceed five thousand dollars (\$5,000) for the first violation,
20 pursuant to A.R.S. § 41-1492(C).

21 E. Order Defendants to make Peyton, Arnoux, Brooks, Figeurora, Jones, Matteson,
22 Seal, Sterling, Barnhart, Burnell, Greene, MacPherson, Marezak, and Whitman, and the class
23 of similarly-situated persons whole for any damages they suffered and award them damages in
24 an amount to be determined at trial.

25 F. Order the State to monitor Defendants' compliance with AzDA.
26

1 G. Award the State its costs incurred in bringing this action, and its costs in
2 monitoring Defendants' future compliance with AzDA as allowed by A.R.S. § 41-1492.09(F).

3 H. Grant such other and further relief as this Court may deem just and proper in the
4 public interest.

5 DATED this 12th day of October, 2011.

6 THOMAS C. HORNE
7 Attorney General

8 By Rose A. Daly-Rooney
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